

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

2:10-CV-1951 JCM (PAL)

LIBERTY MUTUAL INSURANCE  
GROUP,

Plaintiff,

v.

PANELIZED STRUCTURES, INC., et  
al.,

Defendants.

**ORDER**

Presently before the court is plaintiff and counterdefendant, Liberty Mutual Insurance Group's ("Liberty Mutual") motion to dismiss counterclaims for failure to state a claim not barred by the statute of limitations. (Doc. #77). Defendant and counterclaimant Panelized Structures, Inc. ("PSI") has filed an opposition (doc. #81), to which Liberty Mutual has replied (doc. #84).

Liberty Mutual argues that the counterclaims are subject to a four year statute of limitations. Furthermore, Liberty Mutual contends, PSI was made aware of its causes of action against Liberty Mutual by (at the latest) February 2006, when Liberty Mutual commenced the subrogation action in state court. Nevertheless, PSI waited until February 2011, five years after its claims accrued, to file the counterclaim. Accordingly, Liberty Mutual urges the court to dismiss the counterclaims as time barred.

PSI's opposition does not dispute the application of a four year statute of limitations. Instead, it seemingly argues that its causes of action arise from Liberty Mutual's alleged breaches of the duty

1 to defend its insured. Any causes of action arising as a result of the failure to defend, PSI argues,  
2 do not accrue until a final judgment has been entered against the insured. Regardless of the merits  
3 of this argument, PSI's allegations regarding a breach of the duty to defend have been stricken from  
4 the counterclaim. *See* Doc. #67.

5 In light of the record before it, this court agrees with Liberty Mutual that the counterclaims  
6 are time barred.

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Liberty Mutual's motion  
9 to dismiss the counterclaims (doc. #77) be, and the same hereby is, GRANTED.

10 DATED December 13, 2011.

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UNITED STATES DISTRICT JUDGE  
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